

DD/A Registry

78-3659

19 SEP 1978

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File Legal

MEMORANDUM FOR: Deputy Director for Operations
(Attention: [REDACTED])

STATINTL

Deputy Director for Science and Technology
(Attention: Ernest J. Zellmer)

Director, National Foreign Assessment Center
(Attention: [REDACTED])

STATINTL

General Counsel
(Attention: [REDACTED])

STATINTL

Assistant for Information, DDA
(Attention: [REDACTED])

STATINTL

FROM: Michael J. Malanick
Associate Deputy Director for Administration


SUBJECT: Implementation of Executive Order 12065---
Classification Waiver Possibility

1. E.O. 12065 in Section 1-504 states that:

"In order to facilitate excerpting and other uses, each classified document shall, by marking or other means, indicate clearly which portions are classified, with the applicable classification designation, and which portions are not classified. The Director of the Information Security Oversight Office may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information."

2. It is requested that addressees determine any "specified classes of documents or information" for which a waiver from the portion classification requirement noted above may be requested from the Director of the Information Security Oversight Office. A decision to seek a waiver of portion classification for specified classes of documents or information should be fully justified. Those addressees with waivers from portion classification under the current E.O. 11652 may find it useful to review them.

3. It is requested that addressee comments be submitted to Chief, Information Systems Analysis Staff by 28 September 1978 for inclusion in a consolidated Agency waiver request.


Michael J. Malanick

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IV. In the absence of agreement with the HSCA on how sensitive matters are to be handled in its public hearings, the Agency may face the dilemma of how to protect intelligence sources and methods.

- Current employees could find themselves faced with the dilemma of abiding by their secrecy oath and requesting to be excused from testifying, but having to choose between a contempt citation and violation of the secrecy oath.
- Against the possibility that HSCA does not undertake to work with us on this problem, we may have to give notice to the employees of the problem. A draft letter has been prepared (copy attached) for forwarding to present and current employees who have been interviewed by the HSCA. Its limitations are apparent, in that it serves primarily to apprise the employee of his or her dilemma.
- OGC will request further advice from the Attorney General.

V. Should the most pessimistic development come to pass, the situation will be more political than legal. The fact is that time is of the essence, and any stretch-out will reduce the time in which the Agency can react with considered judgments, either in cooperating in the public

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hearings or in opposing their conduct because
of absence of adequate means for protecting
sensitive subject matter.

Dear _____,

The Agency's records indicate that you have been contacted by representatives of the House Select Committee on Assassinations (HSCA) in conjunction with the Committee's investigation into the deaths of President John F. Kennedy and the Rev. Martin Luther King.

As part of the Agency's effort to be fully responsive to the Committee's investigation, you were authorized to disclose classified information to Committee representatives. This was possible because of arrangements worked out between the Agency and the Committee whereby the Committee would obtain this information in secure surroundings and handle it properly once it was acquired.

The Committee has indicated that it plans to hold public hearings in conjunction with its investigation. These hearings are to commence this month and stretch over the next several months. The Agency, of course, has no way of knowing whether you will be called to appear during these public hearings.

You are hereby advised that the Agency's agreement with the Committee under which you have been authorized to disclose classified information to Committee representatives does not extend to public circumstances. Consequently, you are not authorized to disclose classified information during any public hearing in which you may be called to appear.

If you are called to appear in these hearings, and if you are asked a question which would require that you disclose classified information, you are entitled to point out this fact to the Committee and indicate that you are not authorized to reveal classified information in public circumstances. You should also indicate to the Committee that you are quite prepared to answer the question in an executive session, and you may request that the Committee convene such a session to hear your response.

If the Committee were to insist upon your testimony at this point, you are entitled to request that the Committee grant you an opportunity to confer with the Director of Central Intelligence before answering the question.

It is my opinion that the Committee would not continue to insist in the face of these responses from you. However, were it to do so, you must at this point use your own judgment as to how to respond, since your continuing refusal to answer could result in your being found in contempt of Congress.

If you are notified that you are to appear before the Committee in these public hearings, please notify the Agency of this fact promptly. You may do so by making a collect telephone call to the Agency's security duty officer, who can be reached at [REDACTED] at any time, day or night. If you have any questions concerning this letter, please indicate that fact to the duty officer, who will arrange for an appropriate Agency officer to return your call.

Yours truly,

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